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MOBIL OIL CORPORATION: FAILURE TO DELIVER NATURAL GAS TO THE INTERSTATE MARKET

REPORT

BY THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

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LETTER OF TRANSMITTAL

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., February 9, 1976.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am transmitting herewith a Report of the Subcommittee on Oversight and Investigations regarding the Grand Isle 95 Field, operated by Mobil Oil Corporation. The Report concludes that the actions of Mobil, in refusing to accept a permit from the FPC and deliver gas to consumers this winter, were unreasonable, contrary to the Outer Continental Shelf Lands Act (43 U.S.C. § 1331 *et seq.*) and contrary to the public interest. The Report concludes that because this gas could have been available this winter to two severely curtailed pipelines, Mobil's actions may well contribute to any gas shortage in New Jersey, Ohio, and other areas.

The Report notes that this field contains at least 350 billion cubic feet of gas, could have been producing by November 1, 1975, and could have supplied some 120 to 220 million cubic feet per day to Texas Eastern Pipeline and Trunkline Pipeline. This gas could have substantially alleviated the curtailment problems of these pipelines and thus could have materially aided their customers in avoiding any problems due to lack of gas.

The Subcommittee was extremely concerned by this situation, in which Mobil was able to withhold substantial gas from the interstate market merely because it would not agree to conditions imposed by the FPC in order to protect the customer. Further, Mobil was unwilling to begin to deliver this gas while it was contesting those conditions before the FPC and the Courts.

Sincerely,

JOHN E. MOSS,
Chairman Oversight and Investigations Subcommittee.

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MOBIL OIL CORPORATION: FAILURE TO DELIVER NATURAL GAS TO THE INTERSTATE MARKET

During the summer of 1975 the Federal Power Commission and the Federal Energy Administration, both of which are supporters of elimination of Federal price controls on interstate gas, reported that the gas shortfall would be 1.3 trillion cubic feet (18.6%) for the 1975–76 heating season (November to March) and 2.9 trillion cubic feet (19.39%) for the period April 1975 through March 1976. However, the Congressional Office of Technology Assessment on November 4, 1975 disputed the FPC's and FEA's method of calculating the "shortage" because both agencies used contracted quantities and did not allow for lessened actual demand. Therefore, the OTA estimated the yearly shortfall at 1.0 trillion cubic feet (Tcf) instead of 2.9 Tcf. In a report to the House Government Operations Committee on October 31, 1975, the General Accounting Office found the same weakness in the FPC/FEA analysis:

> . . . requirements data submitted (which can be based on entitlements or contract demands) could be overstated. Since curtailments generally are requirements less deliveries, the quantities reported as curtailed would also be overstated.[1]

Thus, the natural gas "shortage" will not be as severe this winter as had originally been projected. Several major interstate pipelines have curtailed substantial amounts of gas, however, and several areas of the country, notably New Jersey, Ohio and North Carolina could still be adversely affected this winter due to a lack of gas. The oil companies attribute the natural gas shortage to Federal price regulation. A recent ad by Mobil Oil Corporation, for instance, called price regulation "A 21-year fiasco" and attributed the shortage to the "government's focus on low prices to the consumer . . ."

The Subcommittee conducted several investigations last year and issued three reports[2] dealing with the industry's failure to develop known and available gas supplies. One of these reports (Cities Service) concerned a delay in doing a needed workover. The other two reports (Bastian Bay and Garden City) found inadequate drilling in two large fields with the result of declining production. The current Subcommittee investigation has focused on the question of whether producers are producing all that they can in good faith or whether they are withholding gas from the interstate market for sale at a much higher price in the event that Congress should remove the Federal price ceiling.

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[1] GAO Report to the House Committee on Government Operations, *The Economic and Environmental Impact on Natural Gas Curtailment During the Winter of 1975–76*, October 31, 1975, at p. 8.

[2] *Preliminary Staff Report Concerning Delays in Natural Gas Production by Cities Service Oil Company* (July 1975); *Natural Gas Supplies: Declining Deliverability at Garden City, La.* (October 1975); and *Natural Gas Supplies: Declining Deliverability at Bastian Bay Field, La.* (November 1975).

The Subcommittee investigated the Grand Isle 95 Field, a large offshore Louisiana field which is operated by Mobil Oil and has proved reserves of at least 350 billion cubic feet of gas. It is likely that reserves currently classified "probable" could make even more gas available from this field. This field could have been on production by November 1, 1975 and could have supplied substantial gas to two of the nation's most severely curtailed pipelines, Texas Eastern Pipeline (serving New Jersey and Ohio) and Trunkline (serving Ohio through its parent company, Panhandle Eastern). Gas from this field alone could have reduced both Texas Eastern's and Trunkline's current heating season curtailment by some 7% to 14% with even larger effects when the whole field is producing.

This gas is part of the Federal Outer Continental Shelf and as such must be sold in interstate commerce. A Certificate of Public Convenience and Necessity from the Federal Power Commission is needed for such a sale. A Certificate is also needed for any new pipeline construction to transport the gas.

The initial Mobil application to the FPC on March 10, 1975, estimated its share of the gas (55%) at 120 million cubic feet per day.[3] Based on this calculation, Gulf's 45% share would be approximately 100 million cubic feet per day. Trunkline's current curtailment is 850 million cubic feet per day [4]—supplies from this field could thus have reduced its curtailment by about 14%. Texas Eastern's current curtailment is 750 million cubic feet per day.[5] Its share (100% of Gulf's share) could thus have reduced its curtailment by about 13%.

Since its original application, Mobil has reduced its estimate for initial deliveries from 120 million cubic feet per day to 60 or 70 million cubic feet per day.[6] It is not clear, however, if any part of this lowered estimate is due to delay caused by a slowing of drilling efforts until the sale is approved.

In spite of the national need for gas and the availability of this gas (the wells are drilled and one producing platform is complete), the gas is not flowing because the operator, Mobil Oil Corporation, insisted on three conditions in its application to the Federal Power Commission (1) An option to use 25% of the gas for its refinery in Beaumont, Texas; (2) A 10-year contract with the pipeline even though the gas reserves are estimated to be produced over 20 years; and (3) the commitment to the interstate market of only some gas reservoirs instead of all available gas in the Grand Isle 95 Field.

On three separate occasions (August 22, 1975, October 3, 1975, and December 19, 1975), Mobil refused to accept Temporary or Permanent Certificates granted by the FPC to sell this gas because the FPC declined to accept Mobil's conditions without a full hearing on their possible effects. On January 23, 1976, the Subcommittee held a hearing on this matter. This Report is based on that hearing and other evidence developed by the Subcommittee.

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[3] Mobil Application for Certificate of Public Convenience and Necessity, March 10, 1975. Mobil estimated the sales volume at 3.6 billion cubic feet per month.

[4] Information supplied to the Subcommittee by Mr. Joseph Salters, Case Manager, Bureau of Natural Gas, Federal Power Commission, on January 22, 1976.

[5] *Id.*

[6] Testimony of Jack E. Earnest, Manager, National Gas Exploration and Production Division, Mobil Oil Corporation, before the Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, January 23, 1976, at Tr. 106.

I. Conclusions

(1) Mobil's actions in refusing to accept any Certificate to sell gas from Grand Isle 95 were unreasonable and were directly contrary to both to Federal policy on Outer Continental Shelf gas and to the public interest. While there was conflicting evidence as to the motivation of Mobil, those actions constitute intentional withholding of gas supplies from the interstate market.

(2) Mobil's actions were particularly unreasonable in this situation where its development costs (some $37 million to date) were supplied under an advance payments agreement with the pipeline—in effect, consumers have already paid for this gas.

(3) Mobil's actions have resulted in making substantially less gas available to two severely curtailed interstate pipelines.

(4) If factory and school closings do occur in New Jersey and Ohio this winter, they are at least partly attributable to Mobil's refusal to accept a Certificate for Grand Isle 95.

II. History of the Grand Isle 95 Field

The Grand Isle 95 Field is composed of four leases—Blocks 93, 94, 95 and 96—located some 42 miles offshore Louisiana. Blocks 94 and 95 were acquired jointly by Mobil Oil Corporation and Gulf Oil Corporation in the September 1972 lease sale for $21.8 million. In November 1972, Mobil, as operator, drilled a wildcat well in Block 95 and discovered a natural gas reservoir.[7] In December, two additional wells were drilled in Blocks 94 and 95 to define the extent of the reservoir,[8] following which Mobil instituted a plan of development for this field.

In March 1973, Mobil ordered a 21-well drilling-production platform—designated Platform "A"—and installed it in Block 95 in September 1973.[9] Between October 1973 and June 1974, six production wells were drilled from this platform. Platform "B", also 21-slots, was set in Block 94 in April 1974, and eleven production wells were drilled by April 1975.

In March 1974, Mobil and Gulf jointly acquired Grand Isle blocks 93 and 96, for a total of $38.2 million. A 12-slot Platform "C" was installed in Block 93 in March 1975. To date, five production wells have been drilled from this platform, a sixth well is currently being drilled, and two more are planned. Production facilities were completed on Platform "A" last November and are awaiting hook-up with a pipeline. Similar facilities are scheduled for installation on Platforms "B" and "C" in February and September 1976.

On March 4, 1975, Mobil executed with Trunkline Gas Company, an interstate pipeline, an advance payment agreement for Grand Isle 95 Field.[10] Under these contracts, Trunkline agreed to advance to Mobil an amount equal to Mobil's total share of the costs of exploring and developing the field (excluding lease acquisition costs) through May 31, 1975. This amounted to a total of $30,100,000. Additionally, Trunkline agreed to advance to Mobil semi-annually amounts equal to Mobil's share of additional development of the field up to a total sum of $37 million.

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[7] Prepared statement of Jack E. Earnest, Manager, National Gas Exploration and Production Division, Mobil Oil Corporation, before the Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, January 23, 1976 at p. 2.
[8] *Id.*
[9] *Id.*, Exhibit A. at p. 1 (Chronology).
[10] *Id.* at p. 3.

At the same time, Trunkline and Mobil executed a sales contract covering a portion, but not all, of the estimated reserves in the Grand Isle 95 Field. Under the contract, Mobil committeed only certain of the known reservoirs to Trunkline.[11] Mobil reserved 25 percent of the gas produced from its share for its own use in its Beaumont refinery, but agreed not to exercise this option until July 1, 1976. The term of the contract was ten years from the date of initial deliveries.[12] The price specified by the contract was 80 cents per thousand cubic feet for the first year, with 4 percent increases annually.[13] The contract provided for escalations equal to Federal Power Commission (FPC) price increases and for a redetermination in the event of deregulation.

On March 10, 1975, Mobil applied to the FPC for a Certificate to sell the gas in the Grand Isle 95 Field (Docket No. 75–538). Mobil's application stated that Trunkline, the proposed purchaser, had "*curtailed 30.5 billion cubic feet during the last quarter of 1974. Mobil's gas supply from Grand Isle Block 95 Field will serve to alleviate the experienced shortage in substantial respects and can be on line and producing for the 1975–76 winter season if the regulatory determinations are not unduly protracted.*" (Emphasis added)

Mobil requested that the intermediate decision procedure be omitted and that the Certificate be issued under an expedited procedure. Mobil noted that though its contract price was 80 cents per Mcf, it agreed to accept an initial rate as determined under FPC Opinion No. 699H, approximately 52 cents per Mcf. It further noted that it would not exercise its right to reserve 25 percent of the gas for its own purposes at that time. Mobil estimated the sales volume to Trunkline (all of Mobil's share—55% of production) at 3.6 billion cubic feet of gas per month or approximately 120 million cubic feet per day.

On March 17, 1975, Trunkline applied to the FPC for a Certificate to construct a pipeline to transport the gas from the Grand Isle 95 Field (Docket No. 75–273). The FPC could not proceed with this application until it had additional information from Trunkline regarding the transporting of Gulf's share of the gas. The Commission requested this information and received it from Trunkline on June 5, 1975.

In another matter where the issue of limited dedications had been raised, Getty Oil Company, *et al.*, Docket No. CI 75–319, the FPC issued an order on June 3, 1975. At that time, the Commission granted Temporary Certificates to all companies involved and set for hearing the issues of limited dedications and producer reservations.

On July 15, 1975, the FPC requested additional information from Mobil regarding its application, and Mobil, although disputing the Commission's authority to request the data, submitted it on July 23, 1975. In this filing, Mobil estimated its share of the proved and prospective reserves (before royalties) at 322 billion cubic feet for this part of the field. Mobil noted in its letter that:

> Mobil is particularly concerned over delays in this particular docket because it is our understanding that the pipeline certificate application for facilities to connect must be issued very soon or

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[11] Federal Power Commission Order Granting Temporary Certificate (Docket Nos. CP75–273 and CI 75–538, August 15, 1975, at p. 3.

[12] *Id* at p. 4.

[13] *Id.*

else we will have missed the construction season to enable commencement of production in about November of this year. We feel very strongly that there is no need for such a delay. We are quite aware of the needs of the pipeline company in meeting its customers' 1975–76 winter needs.

On August 15, 1975, the FPC issued a Temporary Certificate to both Mobil and Trunkline. The Commission ordered that the Mobil case be consolidated with the Getty matter for the purpose of deciding the depth limitation, limited term and producer reservation issues because of (in the FPC's words) "the national shortage of natural gas and the declining gas reserves of interstate pipelines . . ." [14]

On August 22, Mobil notified the Commission that it was rejecting the Temporary Certificate which had been offered. Mobil offered at that time to deplete both its 25 percent producer reservation and the depth limitation in its contract with Trunkline if the Commission would grant it a Permanent Certificate by September 5, 1975. On September 10, 1975, the FPC granted a Permanent Certificate to Mobil. However, the Commission ordered that:

> Mobil's permanent certification will be conditioned on either substitution of a 20-year term in the contract amendment to be filed as part of the rate schedule, or deletion of the delivery term entirely and substitution thereof of a life-of-the-lease (or equivalent) term, whichever is preferable to the parties. In this regard, the Commission notes that Marathon, Texaco, Louisiana Land Offshore Exploration and Texas Eastern Exploration, each of which has received permanent certificates in this consolidated proceeding, filed 20-year term contracts as rate schedules for sales of gas.[15]

On October 3, 1975, Mobil notified the Commission that it was rejecting the Permanent Certificate. Mobil argued that the Commission had no authority to "dictate" the terms of a gas sales contract and attempted to withdraw totally its application for a Certificate.

The FPC issued a third Certificate to Mobil on November 21, 1975. In that Order, the Commission granted either a Permanent or a Temporary Certificate, at Mobil's option. The Commission accepted Mobil's 10-year contract. The Commission also ordered that in compliance with Order No. 539 (issued October 14, 1975, and applicable to all producers), Mobil establish a minimum daily quantity of gas to be delivered and be prepared to explain any shortfalls.

The importance of Order 539 (reprinted as Appendix A) to the consuming public was summarized by Morton L. Simons, a Washington, D.C. attorney with extensive experience before the FPC, in his testimony before the Subcommittee:

> Mr. Lemov (Subcommittee Chief Counsel). Do you feel that Order No. 539 is in the public interest?
>
> Mr. Simons. Very definitely.
>
> Mr. Lemov. Do you think that 539 would tend to insure adequate gas supplies to the consuming public?
>
> Mr. Simons. It would certainly give the Commission, or through the Commission, the public a better handle on what the supplies are.

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[14] *Id.*

[15] Federal Power Commission Findings and Order, September 10, 1975, at p. 8.

> One of the problems is that, when you go back into these contracts, you are going back into a bowl of mush. There is really no obligation to deliver anything. We used to deliver 100,000 [MCF] a day; now it is 10,000 [MCF]; but that is just the way it is. It seems to me 539 gives the Commission a much better handle.[16]

On December 19, 1975, Mobil again refused to accept a Certificate to sell this gas and filed a motion for a rehearing and a stay of the Order. Mobil based its refusal upon its opposition to Order 539. On January 13, 1976, the FPC granted Mobil's Motion for Rehearing. To date, Mobil has declined to accept any Certificate for the sale of gas from the Grand Isle 95 Field and no gas from this field has been sold in interstate commerce.

III. Other producers which have requested similar conditions

The Federal Power Commission has been rightfully concerned for some time about so-called "limited" dedications, wherein a producer attempts to dedicate to the interstate market less gas than is actually available. The FPC's concern is explained by Morton L. Simons:

> The challenge to Mobil's proposed limitations presented by the Commission's several orders are, from the standpoint of the consuming public, indeed important, for every limitation—whether it is the 25 percent reservation of reserves proposed by Mobil, or the depth limitation, or the insistence on a 10-year contract rather than the traditional 20-year contract—means that the public will receive either less gas, or will pay more for the gas it receives, or both.[17]

As a result of the FPC's concern, it consolidated various applications containing limited dedications into one hearing under Docket No. CI 75–319, Getty Oil, *et al.* Twenty-one producer applications have been a part of this case. Of those, for 20 of the applications, the producers either accepted a Permanent Certificate (and withdrew the limited dedication conditions) or accepted a Temporary Certificate and began to deliver the gas pending resolution of the Getty case. For four of those applications,[18] the producers attempted a "conditional acceptance," which was not accepted by the Commission. Those four producers have begun to make deliveries of gas to the interstate market. Only Mobil has declined to accept any Certificate. Appendix B lists these applications.

For Outer Continental Shelf Gas such as Grand Isle 95, the Outer Continental Shelf Lands Act, 43 USC § 1331, *et seq.* mandates that this gas must flow in interstate commerce. Therefore, Mobil has no choice but to sell this gas to the interstate market subject to determination of the FPC and the Courts as to the legality of its proposed conditions. George Lewnes, Assistant General Counsel of the Federal Power Commission explained the situation in his testimony:

> Mr. Lemov. Why do you think that these 20 other companies, all of which are consolidated in this hearing on these issues, all

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[16] Testimony of Morton L. Simons, Esq. before the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, January 23, 1976, (Tr. at 39.)

[17] Statement of Morton L. Simons before the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, January 23, 1976, at p. 3 of his prepared testimony.

[18] Getty Oil (CI 75–319), Atlantic Richfield (CI 75–411), Continental Oil (CI 75–493), and Cities Service (CI 75–558).

accepted certificates and presumably moved the gas in interstate commerce while Mobil didn't? What is your view on that?

Mr. Lewnes. I think the other producers recognized and accepted the state of the law which Mr. Simons succinctly set forth that there is only one way in which this gas can move and it must move via certification by this Commission. If the Commission's conditions that are imposed on a grant of a temporary or permanent are tested in court and found to be wrong, there is retroactive relief, but there was no other recourse for these producers.[19]

IV. Recent trend toward shorter contracts

In recent years, an industry trend has developed in the length or term of contracts. In 1970, for example, out of 424 gas contracts submitted to the FPC, only eight contracts, or 1.9 percent, were for less than 20 years.[20] In 1974, however, 87 of 194 contracts submitted, or 44.8% were for less than 20 years.[21] And during the first 10 months of 1975, 300 contracts were submitted to the FPC, 155 of which, or 51.7% were for less than 20 years.[22] Appendix C is an analysis of contract terms by a consultant which was submitted for the Getty case mentioned above.

The impact of this trend is evaluated by Morton L. Simons, as follows:

Why, then, was there all this debate and dispute over whether it should be ten years or twenty years? The answer lies, I think, and perhaps the Mobil witness can explain it further and in greater detail, but the answer lies in the deregulation bills that are now pending in Congress. A major thrust of many of those bills is that they will deregulate only new sales. Those bills define new sales to include old gas after the contract expires and so the difference between a 10-year term and a 20-year term is simply this: Under existing law, no difference; if the new gas deregulation bill passes, however, at the end of the contract term this gas would become new gas and would be deregulated and could be priced at whatever price Mobil is able to price it at free from regulatory restraint.

This is a situation then in which the prospect of a deregulation bill which is promoted in terms of being desirable to elicit new gas supplies is producing a controversy whose very effect is to retard new gas supplies, to preclude the delivery of new gas supplies.[23]

George A. Lewnes, Assistant General Counsel of the Federal Power Commission, voiced a similar view and added further that:

There is one other factor, I think, that no one has touched upon and that is that if you started accepting the five-year contracts, the four-year contracts, the 10-year contracts, and as the long-term 20-year contracts start expiring, you have a pipeline with short-term gas supply contracts. Pipelines have come before the

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[19] Testimony of George Lewnes, Assistant General Counsel, Federal Power Commission, before the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, January 23, 1976, Tr. at 55–56.

[20] See Appendix C to this Report.

[21] *Id.*

[22] *Id.*

[23] Testimony of Morton L. Simons, Esq., *supra* n. 16, at Tr. 27–28.

Commission and have sought a higher rate of depreciation—in other words, a shorter period of depreciation—because they tell us, "I only have 10 years of gas left to fill my facilities." That, obviously, when translating to a rate case *results in higher rates to the consumers.* (Emphasis added.)[24]

V. Comparing the Mobil-Trunkline contract to other contracts

In order to assess the three requested conditions in the Grand Isle 95 application in the context of other recent applications, the Subcommittee staff analyzed all offshore Louisiana applications submitted between June 1, 1975 and October 1, 1975. Excluding the applications consolidated in the Getty case (mentioned above), this analysis consists of 36 applications. Of those, only three contracts (or 8.3%) contained all three conditions. Appendix D summarizes this study. Furthermore, these three contracts were for small reserves—12 Bcf, 46.6 Bcf, and 59.4 Bcf. There were no applications in the 300–400 Bcf range (as Grand Isle 95) which contained all three conditions. It is clear, therefore, that the Mobil request was an unprecedented one for a large field.

Furthermore, the request was unique for a contract where an advance payment is involved. George Lewnes, FPC Assistant General Counsel testified as follows:

Mr. Lemov. Mr. Lewnes, Minority Counsel raised the question of whether the Commission had agreed in the past to other contracts similar to the one requested by Mobil. I would like to ask you, have there been any situations you know of where an application included a contract with these three kinds of conditions and a large advance payment by a pipeline that the Commission has approved?

Mr. Lewnes. And with a 10-year limitation?

Mr. Lemov. Yes.

Mr. Lewnes. To the best of my knowledge, the answer is no.

Mr. Lemov. What period of time are you talking about, Mr. Lewnes? What is your experience?

Mr. Lewnes. I have been with the Commission since 1959. In 1970 I became Assistant General Counsel and that covers the period since I have been with the Commission.[25]

VI. Mobil's intention to withhold supplies

The critical question is whether Mobil's actions amounted to a withholding of supplies from the interstate market. Mobil's essential argument is that it could not accept a Temporary Certificate because it would not know the exact conditions of the Permanent Certificate until later. Mr. Jack E. Earnest, Manager of the Natural Gas Exploration and Production Division, Mobil Oil Corporation, testified as follows:

Now, with all deference to Mr. Simons, who is an excellent practitioner and knows a whole lot more about proceedings before the Federal Power Commission than I do, it is quite difficult for me to conceive how we could have accepted that temporary authorization and maintained our rights to appeal. How do you change

[24] Testimony of George Lewnes, *supra* n. 19, at Tr. 57.
[25] *Id.* at Tr. 52–53.

your contract, which is the basis for your certificate application, and still maintain your rights to appeal?

Mobil has several times accepted other types of conditions on certificate authorization; notably, the ones that limit up to certain price levels that the Commission has under consideration or in the process at some point. We have accepted the outcome of those proceedings and gone ahead under a temporary.

At any rate, we were very hesitant to accept a temporary authorization when we did not know the conditions of the contract under which we would be selling our gas.[26]

This argument is unpersuasive for two reasons. First, all other producers in the Getty case have accepted either a Permanent or a Temporary Certificate and there appears to be no material difference in Mobil's position. Second, Mobil's rights are fully preserved if it begins deliveries pending a hearing on the issues. Morton L. Simons testified that:

In looking at the practice before the FPC, in looking in part at what the other 20 of the 21 companies did, in trying to examine what the governing law really is, it is difficult to perceive any rational basis for Mobil's refusal to commence service reserves, its right to litigate before the Commission and the courts as to one or two or three of the conditions that it wanted.[27]

The staff of the Federal Power Commission prepared a draft order for this case which was submitted to the Commission on October 24, 1975. That draft order, which was not issued by the Commission, stated:

There appears to be, therefore, no direct incentive on Mobil to initiate the production of gas since all of its expenses are financed by the general public served by Trunkline. There is thereby raised a rebuttable presumption that Mobil *is deliberately and intentionally withholding supplies of natural gas from the interstate market* by its refusal to initiate sales of gas from production properties which are now financed by the general public. (Emphasis added).

This remains the position of the FPC staff, as shown by this testimony:

Mr. Lemov. Does that rebuttable presumption remain your position today?

Mr. Lewnes. (FPC) In my view, it does remain.

Mr. Lemov. Mr. Mamone, you were involved in the drafting of this order, too. Do you continue to believe there is that presumption?

Mr. Mamone. (FPC) Yes, sir.[27]

In view of the above evidence, the Subcommittee must come to the same conclusion as the staff of the Federal Power Commission. While there was conflicting evidence as to the motivation of Mobil, the actions of Mobil were unreasonable, deprived the public of urgently needed gas, and amounted to an intentional withholding of gas from the interstate market.

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[26] Testimony of Jack E. Earnest, *supra* n. 6, at Tr. 83–84.

[27] Testimony of Morton L. Simons, Esq., *supra* n. 16, at Tr. 27.

[28] Testimony of George Lewnes, Assistant General Counsel, FPC, and Russell Mamone, Supervisory Trial Attorney, FPC, before the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, January 23, 1976, at Tr. 61.

Appendix A

United States of America
Federal Power Commission

(18 CFR 2.83)

NATURAL GAS COMPANY—(CERTIFICATES)

Before Commissioners: John N. Nassikas, Chairman; Don S. Smith, and John H. Holloman III.

DOCKET NO. RM76-8

Policy With Respect to Enforcement of Deliverability and Rendition of Natural Gas Services Under Certificated Arrangements

ORDER NO. 539

Promulgating Statement of Policy

(Issued October 14, 1975)

The Commission has concluded that it should formally reiterate its policies with respect to the enforcement of requirements of the Natural Gas Act, 15 U.S.C. 717(a) *et seq.*, as they relate to deliverability and the rendition of natural gas service under certificated arrangements pursuant to that Act.

Events relative to natural gas supplies and demands for natural gas service currently, and over recent past periods, warrant our doing so at this time. Questions concerning deliverability and supply obligations of natural gas producers and natural gas pipelines have arisen in connection with numerous Congressional hearings involving the Natural Gas Act,[1] as well as in the day-to-day administration of the provisions of the Natural Gas Act by this agency.

It is the policy of this Commission to enforce all delivery and supply obligations of jurisdictional natural gas producers and jurisdictional natural gas pipelines, as they may be occasioned by applicable regulations of the Commission and the statutory standards of the Natural Gas Act, which govern—and, therefore, which are incorporated within—the certificates for all certificated arrangements authorized pursuant to the Act. In addition to these standards, there are numerous delivery and supply obligations arising from contractual obligations extant among natural gas producers, pipelines or distributors. It is the policy of the Commission that each affected producer, pipeline or distributor shall take all appropriate actions to enforce those obligations, in the appropriate administrative or judicial forum at Federal, state or local levels. The constraints of private contracts operate in conjunction with and subject to public regulatory power.

[1] See, for example: Preliminary Staff Report of the Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce, 94th Congress, 1st Session, July 18, 1975; Hearings on Natural Gas Supplies Before the Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce, 94th Congress, 1st Session, June 9, 13, 26 and 27, July 14 and 21, 1975, Serial Nos. 94-23 and 94-24; Federal Preparedness to Deal With the Natural Gas Shortage Emergency This Coming Winter: Third Report by the House Committee on Government Operations, 94th Congress, 1st Session, July 25, 1975, pp. 24 and 35; Federal Preparedness to Deal With the United States Natural Gas Shortage; Hearings Before the Subcommittee on Conservation, Energy and Natural Resources, House Committee on Government Operations, 94th Congress, 1st Session, June 12 and 26, 1975; Federal Power Commission Oversight Hearings, Committee on Commerce, United States Senate, 93d Congress, 2nd Session, August 20 and 22, 1974, Part 2, pp. 331-335; and Hearings on Natural Gas and Oil Regulatory Bills Before the Committe on Commerce, United States Senate, October 10, 11 and 24, 1973, Part I, pp. 209-211.

We believe our action will be helpful to provide certainty of legal obligations and regulatory enforcement policy, and to provide reliable gas service to the natural gas industry, natural gas consumers, Federal, state and local governmental authorities and members of the general public which may be concerned with the adequacy and reliability of natural gas supplies and services throughout the Nation.

The Natural Gas Act—Legal authority for the rendition of a jurisdictional sale or service of natural gas in interstate commerce under the Natural Gas Act, 15 U.S.C. 717, is evidenced by appropriately issued certificates of this Commission pursuant to Section 7 of that Act, 15 U.S.C. 717f, and appropriately effective rate schedules pursuant to Section 4 and 5 of that Act, 15 U.S.C. 717 c and d. Without Commission authorization "no natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission * * * unless there is in force with respect to such natural gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations * * *.", 15 U.S.C. 717f(c). Abandonment of jurisdictional facilities or services is prohibited unless the Commission has found "* * * that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment." 15 U.S.C. 717f(b).

Among the conditions of every Section 7 certification are the requirements of subsection 7(e) that the applicant is able and willing properly *inter alia:*

To do the acts and to perform the service proposed;

To conform to the provisions of the Act and the requirements, rules, and regulations of the Commission; and

That the proposed service, sale, operation, construction, extension or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity.

Sections 4 and 5 of the Natural Gas Act obligate each natural gas company to render jurisdictional sales or services which are just and reasonable and without undue discrimination or preference: all in accordance with rates, charges, classifications, rules, regulations, practices or contracts which are just, reasonable and not unduly discriminatory or preferential. See *FPC* v. *Louisiana Power & Light Co.*, 406 U.S. 621 (1972), and cases therein cited; and *Pennsylvania Power Co.* v. *FPC*, 343 U.S. 414 (1952), interpreting the comparable rate and service provisions of the Federal Power Act, 16 U.S.C. 824d and e.

Contractual Arrangements—Contractual relations between jurisdictional suppliers of natural gas, jurisdictional pipeline or non-jurisdictional distributors of natural gas are circumscribed by, and are themselves subject to, the statutory standards of the Natural Gas Act. As the Supreme Court stated in *Sunray Mid-Continent Oil Co.* v. *FPC*, 364 U.S. 137, 153, 155–6 (1960):

> * * * The Power Commission has from an early date taken the view that there is a continuing obligation to perform "service" imposed by the Act which outlasts the terms of a seller's original contract of sale (at p. 153).
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> * * * *Mobile* recognized that there were two sources of price and supply stability inherent in the regulatory system established by the Natural Gas Act—the provisions of private contracts and the public regulatory power * * * An initial application of an independent producer, to make movements of natural gas in interstate commerce, leads to a certificate of public convenience and necessity under which the Commission controls the basis on which "gas may be initially dedicated to interstate use. Moreover, once so dedicated there can be no withdrawal of that supply from continued interstate movement without Commission approval. The gas operator, although to this extent a captive subject to the jurisdiction of the Commission, is not without remedy to protect himself." 360 U.S., at 389. That remedy he has, as the Court there said, in the "change" power under § 4(d) when his contract has expired or where his contract permits its use during its term. Under a similar Act, this Court has held to the same effect as we hold today. *Pennsylvania Water & Power Co.* v. *Federal Power Comm'n*, 343 U.S. 414, 423–424 (at pp. 155–6).

Within the referenced cited holding of the Supreme Court in the *Pennsylvania* case, the Supreme Court held, 343 U.S. 422:

> * * * To the extent that Penn Water is being controlled, it is by the Commission acting under statutory authority, not by Consolidated acting

under the authority of private contract terms "legalized by the Commission. The duty of Penn Water to continue its coordinated operations with Consolidated springs from the Commission's authority, not from the law of private contracts.

Enforceability of Certificated Arrangements—Upon commencement of jurisdictional sales or services,[2] this Commission has full authority to enforce the rendition of, *inter alia*, natural gas services, sales or operations, as certificated by the Commission, including as a part thereof, necessary deliverability of production of natural gas to meet, *inter alia*, certificated operations, services, developments, quantities, volumes or sales.

As certificated, such factors may or may not accord with the terms of sales or other contractual arrangements among natural gas producers, pipelines or distributors in seeking Commission authority to engage in jurisdictional sales or services. To the extent that contractual obligations coincide with the certification authority, these factors are thus also enforceable as a matter of private contract law. However, it is the statutory standards of the Natural Gas Act which ultimately control the terms under which natural gas companies may operate jurisdictional facilities and engage in jurisdictional transactions. Certificated obligations are enforceable by pipelines as a matter of the private law of contracts as well as by this Commission as a matter of public regulatory law.

Subsection 7(e) of that Act, 15 U.S.C. 717f(e), provides "* * * The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require. * * *" This conditioning authority is a broad authorization, as pointed out by the Supreme Court in *Atlantic Ref. Co.* v. *Pub. Serv. Comm'n*, 360 U.S. 378, 389 (1959):

> * * * Section 7(e) vests in the Commission control over the conditions under which gas may be initially dedicated to interstate use. Moreover, once so dedicated there can be no withdrawal of that supply from continued interstate movement without Commission approval. * * *[3]

In addition to Commission initiated proceedings, certificate, rate schedule or contractual obligations of any natural gas company producer or natural gas company pipeline may be made the subject of appropriate complaint proceedings before the Commission. Section 1.6 of the Commission's Rules of Practice and Procedure provides in part, 18 CFR 1.6(a):

> Any person, including any State or local commission, complaining of anything done or omitted to be done by any * * * natural gas company in contravention of an act, rule, regulation or order administered or issued by the Commission, may file a complaint with the Commission.

Section 16 of the Natural Gas Act, 15 U.S.C. 717o, confers upon the Commission "* * * power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of this act. * * *" This is a most board authority. *FPC* v. *Louisiana Power & Light Co.*, *supra*, @ p. 642. Judicial enforcement authority attains for Commission use pursuant to Section 20 of the Natural Gas Act, 15 U.S.C. 717s; criminal penalty provisions are set forth in Section 21 of the Act, 15 U.S.C. 717t.

In addition to the foregoing provisions, affected parties may well have numerous judicial remedies available to enforce certificate rate schedule or contractual obligations of any natural gas company producer, natural gas company pipeline or natural gas distributor.

The Commissioner further finds:

(1) Prior notice and opportunity for public participation in this proceeding promulgating this Statement of Policy is not required either pursuant to the

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[2] The exclusion of the production and gathering functions from the jurisdictional coverage of the Natural Gas Act, 15 U.S.C. 717(b), does not defeat the Commission's plenary regulatory authority over "* * * (1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale * * *". *FPC* v. *Louisiana Power & Light*, *supra*, p. 636; or preclude the Commission from considering production and gathering when relevant to the exercise of the Commission's authority to regulate such transportation, sales or companies. *FPC* v. *Transcontinental Gas Corp.*, 365 U.S. 1, 26 (1961).

[3] See also, *Mitchell Energy Corporation*, Opinion No. 733, issued June 11, 1975, — FPC ——, (appeal pending, *Mitchell Energy Corporation* v. *FPC*, CA5, No. 75-3110, and *El Paso Natural Gas Company, et al.*, Opinion No. 737, issued July 11, 1975, —— FPC ——, (appeal pending *sub nom.*, *Southland Royalty Co., et al.* v. *FPC*, CA5, No. 75-2851.

provisions of the Natural Gas Act, 15 U.S.C. 717(a) *et seq.*, or the provisions of the Administrative Procedure Act, 5 U.S.C. Subchapter II, 553. Moreover, compliance with the effective date requirements of 5 U.S.C. 553(d), is not required since this Statement of Policy does not prescribe an added duty or restriction.

(2) It is necessary and appropriate for purposes of administration of the provisions of the Natural Gas Act, 15 U.S.C. 717(a) *et seq.*, to amend Part 2; General Policy and Interpretations, Subchapter A, General Rules, Chapter I, Title 18, Code of Federal Regulations, by the inclusion therein of Section 2.83, Policy With Respect To Enforcement of Deliverability And Rendition Of Natural Gas Services Under Certificated Arrangements, all in the manner hereinafter directed.

The Commission, acting pursuant to the provisions of the Natural Gas Act, particularly Sections 4, 5, 7, 16, 20 and 21 thereof (52 Stat. 822, 823, 824, 825, 830, 832, 833; 56 Stat. 83, 84; 61 Stat. 459; 76 Stat. 72; and 15 U.S.C. 717c, d, f, o, s and t, *orders:*

(A) Part 2, General Policy and Interpretations, Subchapter A, General Rules, Chapter I, Title 18, Code of Federal Regulations, is hereby amended by adding a new Section 2.83 to read as follows:

2.83 Policy With Respect To Enforcement Of Deliverability And Rendition Of Natural Gas Services Under Certificated Arrangements.

(a) Natural gas companies within the meaning of Section 2(6) of the Natural Gas Act (whether producers or pipelines) shall comply with all deliverability or production of natural gas requirements to meet, *inter alia*, certificated operations, services, developments, quantities, volumes or sales. The standards of compliance shall be the controlling statutory standards of the Natural Gas Act, chiefly those of Sections 4, 5 and 7 thereof. The certificate of the Commission authorizing jurisdictional transactions under the Natural Gas Act shall be deemed evidence of those requirements, whether or not specifically reproduced within the certificate document or order. Natural gas pipeline companies and natural gas producers have obligations arising from the Natural Gas Act with respect to, *inter alia*, deliverability and receipt of certificated volumes of natural gas supplies, violation of which obligations will subject either to the sanction and/or penalty provisions of that Act. While this Commission is charged with responsibility for the administration of the Natural Gas Act, regulated pipelines and producers have affirmative obligations to enforce delivery of certificated volumes of natural gas supplies by reason of the requirements of that Act.

(b) The Commission, acting upon its own motion, will undertake appropriate enforcement proceedings either before the Commission or the Courts to ensure compliance with all delivery or production of natural gas requirements to meet certificated operations, services, developments, quantities, volumes or sales as referred to in paragraph (a) *supra*.

(c) The Commission invites, and will entertain, complaints pursuant to Section 1.6 of the Commission's Rules of Practice and Procedure seeking enforcement of certificate, rate schedule or contractual obligations of any natural gas company producer or natural gas company pipeline with reference to matters set forth in paragraph (a) *supra*.

(d) The Commission shall include, subsequent to the date of Order No. 539, the following general language within the Commission's Order Issuing Such Certificate Temporary or Permanent:

> Applicant natural gas company's attention is directed to Commission Order No. 539, issued October 14, 1975—F.R.—and to the provisions of Section 2.83 General Policy and Interpretations, 18 CFR 2.83. Moreover, issuance of this certificate authorization is conditioned to require Applicant, within 30 days of the initial reserve determination or any subsequent redetermination thereof, to report the results of each such initial or redetermination study to the Commission. The certificated minimum daily delivery obligation of the seller (1) shall be determined in accordance with applicable provisions specifically set forth in seller's contract unless otherwise changed by the certificate authorization, (2) shall be without regard to any contractual reservations contrary to the certificate authorization, (3) and shall remain in full force and effect unless and until changed by appropriate certificate authorization amendment based upon Applicant's full documentation of, *inter alia*, the reasons for any such proposed amendment, the sales production history, the amount of remaining connected reserves of Applicant dedicated under the contract and the status of Applicant's nondeveloped

reserves dedicated under the contract. The certificate authorization is further conditioned to require that Applicant, if it has not secured an appropriate certificate amendment and there are circumstances resulting in the delivery of a lesser quantity of natural gas than any certificated delivery obligation, Applicant shall file for each contract year quarter, a verified report setting out the circumstances of such lesser deliveries and the corrective actions which Applicant proposes to undertake in order to meet any experienced delivery deficiency, such verified reports to be filed within 10 calendar days after expiration of each contract year quarter.

(e) Nothing herein contained shall be deemed to preclude the exercise of any other administrative or judicial remedies which might otherwise obtain to any person.

(f) Nothing herein amends, modifies or changes any existing authorization for jurisdictional transactions as now certified or authorized by the Commission pursuant to the provisions of the Natural Gas Act, Sections 4, 5 or 7 thereof.

(B) The amendment provided for herein shall be effective as of the date of issuance of this order.

(C) The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register.

By the Commission:

[SEAL]

KENNETH F. PLUMB,
Secretary.

APPENDIX B

FEDERAL POWER COMMISSION DOCKETS CONSOLIDATED IN GETTY OIL CO., ET AL. (DOCKET NOS. C175-319, ET AL.)

Docket No.	Seller	Field	Estimated contract volume (MCF)	Contract term (yr)	Certificate issued	Date certificate accepted
CI-75-319	Getty Oil Co	Eugene Island Block 217	450,000	5	June 3, 1975	[1] Aug. 11, 1975
CI-75-411	Atlantic-Richfield Co	do	450,000	5	do	[1] Aug. 7, 1975
CI-75-493	Continental Oil Co	do	3,600,000	5	do	Do.
CI-75-516	Getty Oil Co	West Cameron Block 177	86,540,000	20	Sept. 9, 1975	Sept. 29, 1975
CI-75-538	Mobil Oil Co	Grand Isle Block 95	322,300,000	10	Aug. 15, 1975	[2]
CI-75-558	Cities Service Oil Co	Eugene Island Block 217	900,000	5	June 3, 1975	[1] Aug. 7, 1975
CI-75-614	Texaco, Inc	Eugene Island Block 205	7,800,000	20	Sept. 9, 1975	Sept. 29, 1975
CI-75-651	Atlantic-Richfield Co	West Cameron Block 177	2,160,000	20	do	Do.
CI-75-680	Texaco, Inc	Eugene Island Block 342	216,000,000	20	Sept. 10, 1975	Oct. 6, 1975
CI-75-717	Tenneco Exploration Ltd	Eugene Island Block 208	54,000,000	10	Oct. 14, 1975	Nov. 13, 1975
CI-75-719	Tenneco Oil Co	do	[3]	10	do	Do.
CI-75-746	do	East Cameron Block 281	248,400,000	10	July 24, 1975	Aug. 21, 1975
CI-75-747	do	Eugene Island Blocks 342 and 343	295,920,000	20	do	Do.
CI-75-748	Tenneco Exploration Ltd	do	295,920,000	20	do	Do.
CI-75-761	Continental Oil Co	South Marsh Island Block 261	5,400,000	20	Sept. 9, 1975	Sept. 17, 1975
CI-75-769	Getty Oil Co	do	24,000,000	20	do	Sept. 19, 1975
CI-76-2	Atlantic-Richfield Co	do	5,400,000	20	do	Sept. 30, 1975
CI-76-18	Cities Service Oil Co	do	5,400,000	20	do	Sept. 22, 1975
CI-76-41	Continental Oil Co	West Cameron Block 177	7,200,000	20	do	Sept. 19, 1975
CI-76-58	Cities Service Oil Co	do	7,200,000	20	do	Sept. 22, 1975
CI-76-74	Texaco, Inc	East Cameron Block 281	124,200,000	5	Sept. 22, 1975	Oct. 21, 1975

[1] Conditional acceptance filed by the producers but rejected by the FPC. The Subcommittee has been advised by the FPC that the certificates are deemed accepted as service has commenced.

[2] Rejected.

[3] Resale of gas in CI-75-717.

APPENDIX C

In the Matter of

GETTY OIL COMPANY, ET AL.

Federal Power Commission

DOCKET NO. CI175-319, ET AL.

EXHIBIT TO ACCOMPANY TESTIMONY OF MARY JANE KLIPPLE

SCHEDULE 1

CONTRACTS FOR INTERSTATE SALES OF NATURAL GAS TO INTERSTATE PIPELINE COMPANIES

[Contracts with specific depth limitations]

	South Louisiana, offshore			United States			Number of contracts with depth limitations as percent of total contracts	
	Some depth limitation	No depth limitation	Total	Some depth limitation	No depth limitation	Total	South Louisiana	United States
Year:								
1970	32	2	34	220	204	424	94	52
1971	33	16	49	161	117	278	67	58
1972	45	14	59	173	123	296	76	58
1973	31	7	38	87	63	150	82	58
1974	34	7	41	114	80	194	83	59
1975 (10 mo)	49	31	80	182	118	300	61	60

Source: Contracts on file with the Federal Power Commission as rate schedules, or as applications for certificates of public convenience and necessity through October 1975. All contracts dated 1970-74 are sales for which certificates of public convenience and necessity have been issued. 129 of 300 contracts included in 1975 have not as yet received certificates.

SCHEDULE 2

CONTRACTS FOR INTERSTATE SALE OF NATURAL GAS TO INTERSTATE PIPELINE COMPANIES

[Number of contracts by term of contract]

	South Louisiana, offshore—Term of contract (years)						United States—Term of contract (years)					
Year	20 yr or more	15-19	10-14	5-9	1-4	Total	20 yr or more	15-19	10-14	5-9	1-4	Total
1970	34					34	416		7	1		424
1971	48	1				49	252	6	18	2		278
1972	56	2	1			59	240	31	20	5		296
1973	33	4		1		38	102	6	24	16	2	150
1974	28	2	8	2	1	41	107	8	22	50	7	194
1975 (10 mo)	47	3	18	12		80	145	9	42	55	49	300

Source: See schedule 1.

APPENDIX D

SUBCOMMITTEE STAFF STUDY SUMMARY OF OFFSHORE LOUISIANA GAS SALES APPLICATIONS BY PRODUCERS, JUNE 1 TO OCT. 31, 1975

[36 contracts]

	Contracts	Percent
Limited dedication of reserves	19	52.8
Producer reservation of reserves	7	19.4
Limited term contracts (less than 20 yr)	15	41.7
Contracts with all 3 of the above conditions	[1] 3	8.3

[1] These 3 contracts had the following estimated reserves: (1) 12.0 BCF; (2) 48.6 BCF; (3) 59.4 BCF. The estimated reserves for Grand Isle block 95 field according to Mobil are 322.3 BCF.

MINORITY VIEWS

In these views, it is our intent to take strong exception to the conclusions reached in the Subcommittee's report especially that conclusion which specifies that Mobil *intentionally* withheld gas from the interstate market. This is anything but a case of withholding. The Subcommittee in our opinion could have hardly picked a poorer choice to demonstrate withholding than this one involving Grand Isle 95 Field.

The record of the Subcommittee and the Federal Power Commission demonstrates not an intent on Mobil's part to withhold, but quite to the contrary, an effort by Mobil to bring gas into production and on line as quickly as they could. To illustrate this point graphically, we present the following facts. First, Mobil and Gulf acquired interests in Blocks 94 and 95, Grand Isle area, in the 1972 lease sale. In the 1974 lease sale, Gulf and Mobil acquired Blocks 93 and 96. Mobil has a 55% interest in this field and Gulf a 45% interest. As of September 1975, only one field, Main Pass 140 (also owned by Gulf and Mobil), acquired in the 1972 lease sale was in production. Grand Isle 95 was ready to go into production as early as November of 1975. If Mobil was intent upon withholding gas, why then we ask did it develop the field so rapidly so as to be ready for production ahead of all but one other tract acquired in the same 1972 lease. This certainly does not appear to us to be the actions of a company that is intent upon keeping gas from the interstate market, but quite to the contrary, it illustrates an example of a company that is striving earnestly and in good faith to produce gas for the interstate market.

Second, Mobil and Trunkline Gas Company entered into a gas sales contract for the gas produced at Grand Isle 95 on March 4, 1975, and *six days* later on March 10, 1975, Mobil applied for a certificate from the FPC to sell gas to Trunkline in accordance with that contract. This chain of events hardly reflects a company that is intent upon using dilatory tactics to withhold gas from the interstate market. Mobil was seeking to sell their gas to the interstate market. They wanted Trunkline to obtain the production from this field. Does entering into a contract to sell gas and seeking promptly an FPC certification illustrate an intent to withhold?

Third, Mobil's application for a certificate further illustrates that there was no intent on their part to withhold. As a matter of fact, in that application Mobil stressed and we re-emphasize stressed that they would like *prompt* action on this application for certificate so as to enable pipeline construction during the *summer of 1975*. If prompt action had been taken on this application, gas would have been available to consumers during the 1975–1976 winter heating season. Again we must ask the question, do these actions sound like those of a company intent upon withholding gas?

The problems with respect to Grand Isle 95 did not begin to develop, however, until their application for a certificate reached the FPC. The Subcommittee report places great emphasis upon the fact that Mobil's contract contained three specific provisions which are at the heart of the controversy (25% reservation, depth limitation, and 10-year term). We hasten to point out, however, that in March 1975 when Mobil applied for this certificate the FPC had not in any way indicated that they would not grant a certificate to a contract containing such provisions.

The state of the law at that time was such that these types of provisions were entirely acceptable. In fact, on March 3, 1975, Mobil filed an application covering a sale to United Gas Pipe Line Company from the West Cameron Block 587 Field which involved advance payments, a depth limitation, a ten-year term and a provision under which Mobil could reserve gas for its own use. The FPC had no trouble in acting favorably and promptly on this application. In March 1975, the FPC issued a temporary certificate which did not object to any of these contract terms. Why was it reasonable to accept the West Cameron Block 587 contract terms but reject the Grand Isle Block 95 contract with the same essential terms? Additionally, the contract with Trunkline was an "arms-length" transaction accepted by the pipeline and executed by them. The pipeline also asked the FPC to take prompt action on its application for certification of this contract so that they could commence construction of their pipeline. We cannot accept as unreasonable Mobil's effort to have its contract certificated when there was nothing to prohibit the certification of such a contract.

We note that in spite of the fact that Mobil submitted its application in March asking for expeditious action they did not hear from the FPC until July 1975, or midway through the summer construction season in the offshore. The July notification was not an offer to certificate but only a request, in the form of a letter, for additional information. Mobil promptly supplied the requested information to the Commission. No mention was made in this letter of any FPC objection to the terms of the contract.

It was not until June 1975 that it became apparent to anyone applying for a certificate that the FPC was reconsidering its policy on any of the three types of conditions contained in the Mobil-Trunkline contract. The advent of the case of Getty Oil Company *et al.*, Docket No. CI–75–319 dealing with limited dedications was the first inkling that contracts containing such provisions may not be certificated. It certainly can be said that Mobil and Trunkline officials when executing their contract lacked prescience about prospective FPC actions, but this scenario hardly evidences unreasonableness on the part of Mobil in seeking certification of this contract.

On August 15, 1975, the FPC issued a temporary certificate to Mobil and Trunkline. This certificate was offered to Mobil a full five months after Mobil's application for certification on March 10, 1975. Recall, that when Mobil submitted its application, it asked for prompt action on its certificate. Mobil did, in fact, reject this offer of a Temporary Certificate offered in August. In issuing that Temporary Certificate to Mobil, the FPC ordered that the Mobil case be consolidated with the Getty case in order to decide the questions of depth limita-

tions, limited term and producer reservation. Almost immediately upon receipt of this offer of Temporary Certification Mobil contacted Trunkline who according to the testimony of Mobil's Manager of Natural Gas, Jack E. Earnest, had been advising Mobil that because of the inordinate delay in certification that it "was getting terribly late in the season to hope to get (a pipeline) built." Trunkline at this time advised Mobil according to Mr. Earnest's sworn testimony "that September 5th was about the last date they (Trunkline) had about completing the pipeline" in time for the winter heating season.

Mobil then in an effort to get this gas flowing rejected the Temporary Certificate, but in the alternative asked for a rehearing offering also to eliminate two provisions of their contract, namely the 25% reservation and the depth limitation if the Commission would grant them a permanent certificate by September 5, 1975, which was the last date that Trunkline indicated they could act. Mobil did not relent on its ten-year contract term. So, the Commission in response to Mobil's rejection of the Temporary Certificate and Application for Rehearing including its offer to delete two of the three contract provisions in controversy offered Mobil a permanent certificate on September 10, 1975 (5 days after Trunkline's last date and that date requested by Mobil) but specifying that Mobil would be required to revise its contract to provide for a 20 year or "life of lease" term. On this very point of term of contract, we must note here parenthetically that in November 1975 the FPC reversed itself and offered Mobil a 10-year contract.

On the basis of these facts, we ask ourselves who is the malefactor here? Surely, it is not Mobil. They submitted an application in March asking for prompt certification but did not hear from the FPC until July and then only a letter asking for more information. They were offered a Temporary Certificate on August 15, but were advised that three of their contract provisions required further consideration by the Commission. Mobil offered to eliminate two of those provisions and the third was later adjudged to be something that they were entitled to in the first place. Does that chain of events sound as if Mobil acted unreasonably? We think not. What we find here is the ever prevalent morass of bureaucratic "red tape", changing rules in the middle of the game and failure to act with dispatch.

It is this and other similar fact situations that have made us call for less government regulation. This is an example of what happens when the Federal Government seeks to implicate itself in the free market system. It appears that two parties cannot even enter into a contract which they believe is fair, just and reasonable and which is consistent with the present state of the law without the Federal Government requiring them to change three of its provisions. We ask whatever happened to the centuries old common law tradition of "sanctity of contract".

The saga of Grand Isle 95 does not end on September 10, because on October 3, 1975, Mobil rejected the FPC offer of a permanent certificate. Recall, that by granting this last certificate on September 10, 1975, the last day for Trunkline to start construction for the winter heating season had passed. The weather and high seas in the Gulf of Mexico during October and November virtually preclude pipeline construction. This period of the year we must also point out is the

hurricane season in the South Louisiana Offshore area and there was in fact a hurricane last year during that time.

There has been one subsequent attempt by the FPC to grant Mobil a permanent certificate that was on November 21, 1975 when the Commission offered Mobil a permanent certificate and this time as we noted earlier, agreeing to the 10-year contract. The problem here, however, is another rule change which was brought about by FPC Order 539. This Order seeks to impose upon producers a standard "certificated minimum daily delivery obligation". Producers, as Mr. Earnest testified before the Subcommittee, really do not quite know what Order 539 means and they hope that it does not mean what they think it may mean.

If it means that producers must warrant that a minimum quantity of gas be delivered daily by the producer, producers quite simply cannot meet such a requirement. First, as the Minority views to the Subcommittee report on the Garden City Field pointed out, such a requirement is "wholly unrealistic when one examines the nature of a natural gas reservoir", because of the many uncertainties and variables which are simply unknown when a project is begun. Producers because of these uncertainties simply cannot guarantee that a field will produce a given quantity of gas. A case in point will be helpful here. Gulf Oil entered into a contract with Texas Eastern Pipeline several years ago, and they warranted that they would provide a certain amount of gas to Texas Eastern from a field known as West Delta 27. It turns out with respect to this field that Gulf had substantially over estimated reserves for this field. The field turned out to be much smaller than Gulf originally thought and they could not meet the guarantee that they gave to Texas Eastern. Gulf applied to the FPC for relief from this contract but received none with the FPC instructing Gulf that they would have to meet their obligation under this contract from other sources. By a strange quirk, Gulf's 45% interest in Grand Isle 95 is committed to Texas Eastern for just that purpose to make up deficiencies in gas not available in West Delta 27.

We would now like to treat certain items in the Subcommittee's report which specifically bear closer scrutiny. First, Mobil is criticized in the report for reducing its initial deliveries contained in its original application from 120 million cubic feet per day to 60 or 70 million cubic feet per day. The fact of the matter is that Mobil has not reduced its estimate from Grand Isle Field 95. The 120 million cubic feet per day rate was not for initial deliveries because initial deliveries will come only from Mobil's platform A which will produce at a rate of approximately 68 million cubic feet per day.

The 120 million cubic feet figure is Mobil's share for both platform A and B. Platform B was not scheduled to be available for production during the initial delivery phase. Second, the Subcommittee report reaches the conclusion that:

"Mobil's actions were particularly unreasonable in this situation where its development costs (some $37 million to date) were supplied under an advance payment agreement with pipeline—in effect, consumers have already paid for this gas."

A few things need to be said about this issue of expenditure of capital in order to bring this issue into sharper focus. First, with re-

spect to the advance payment by Trunkline, this was not a gift by Trunkline to Mobil, but was in fact a loan by the pipeline to Mobil which Mobil will have to repay to Trunkline. We believe the Subcommittee report leaves one with the impression that Trunkline paid for all of the development costs and that their expenditures would not be recovered. Second, development costs are not the only expenses that go into bringing a field into production because first you must acquire the field. Mobil and Gulf spent jointly $60 million to acquire the field which would mean Mobil's 55% share of the lease acquisition costs would come to $33 million.

Third, Mobil is condemned in the report for not accepting the Temporary Certificate on August 15, 1975, and beginning deliveries of gas pending a hearing on the issues in controversy. The report contends that if Mobil had done this that its legal rights would have been fully protected. Evidently there is disagreement concerning whether Mobil's rights would have been fully protected if they had adopted such an approach. The Washington law firm of Grove, Jaskiewicz, Gilliam and Cobert prepared a legal opinion on this very point and concluded:

"In sum, it is our opinion that Mobil's judicial review posture could have been severely prejudiced had Mobil commenced deliveries under authorizations it believed to be invalid; that Mobil acted prudently in preserving its rights to review by not initiating deliveries; that for practical reasons it would have been unwise to commence deliveries without knowing the substantive conditions of service; and that otherwise, Mobil did all it could do in order to expeditiously secure a reasonable and lawful certificate."

We are attaching as an Appendix to our views the full text of the above referenced letter.

James M. Collins.
Robert Krueger.

Grove, Jaskiewicz, Gilliam and Cobert,
Washington, D.C., January 29, 1976.

Re Mobil Oil Corp., FPC Docket No. C175–538 (Application for certificate, sale to Trunkline Gas Co., Grand Isle Block 95 Field, offshore Louisiana).

Robert D. Haworth,
Senior Attorney, Mobil Oil Corp.
Houston, Tex.

Dear Bob: You have requested our opinion as to certain questions raised in connection with the captioned matter. The procedural history of Docket No. C175–538 is summarized in the January 23, 1976, Statement of Jack E. Earnest, Manager, Natural Gas Exploration and Producing Division, Mobil Oil Corporation, before the House Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, and need not be repeated. A Subcommittee Staff memorandum also summarized procedural events in the proceedings before the Commission.

It was suggested during the Subcommittee hearings that "Mobil's refusal to sell is unwarranted, contrary to the purposes of the Outer Continental Shelf Lands Act," and contrary to the public interest because "even had it [Mobil] commenced the sale subject to one or another of the FPC orders in this case, it would have remained free to challenge, both before the Commission and the Courts, the propriety of . . . standards" on which the orders were based. (Statement of Morton L. Simons, p. 4, January 21, 1976). In our opinion, however, Mobil has taken a reasonable position based upon sound legal, tactical, and business considerations.

At the outset, we should point out that this matter does not centrally involve the question of whether the temporary certificate offered by the order of August 15, 1975 was required to be challenged immediately, or whether conditions expressed therein could be challenged at a later time, *e.g.*, upon issuance of a "permanent" certificate.[1] Rather, Mobil's opportunities to timely challenge orders which contained unlawful conditions must be assessed in terms of whether such orders were reviewable (after denial of rehearing thereon) if Mobil accepted the proferred certificate and commenced deliveries in accordance with the certificate.

In addition to the August 15, 1975 order, which granted a conditional temporary certificate, the Commission also issued orders dated September 10 and November 21, 1975, granting conditional permanent certificates. The latter order also issued a conditional temporary certificate in the alternative. As to all three orders, it is our opinion that unqualified acceptance of the certificates and commencement of deliveries would have been fundamentally inconsistent with an attempt to seek judicial review of orders issuing such certificates. Simply stated, it is contrary to concept of "aggrievement" for a person to accept, and act in accordance with, an order which he claims to injure him; and the courts have so recognized this inconsistency.

For example, in *Sunray Mid-Continental Oil Co. v. FPC*, 270 F. 2d 404 (10th Cir. 1959), the Court was asked by a produer to review two Commission orders granting temporary certificates. With respect to the first order, the producer had initiated deliveries pursuant to the temporary auhorization. In this context, the Court noted (270 F. 2d at 407) that:

"The right of this court to review orders of the Federal Power Commission is limited by Sec. 19(b) of the Natural Gas Act to instances where the petitioner is presently aggrieved by the imposition of such orders. . . . Sunray is currently selling its gas and has made no affirmative effort to cease. The Commission has made no objection to the status quo."

The Court thereupon held that the "present petition is premature," and dismissed the case.

In sharp contrast to this situation, the producer had not initialed deliveries under the second order. As to this order, the Court held that the producer was entitled to review, stating (270 F. 2d at 408):

"Siince the acceptance order of the Commission is clearly and unequivocally conditioned in such a manner as to immediately affect Sunray if that company should initiate temporary service it is apparent that petitioner can presently queston the right of the Commission to condition temporary certficates at all and, in particular, as done in the instant case."

Again, in *Texaco Inc.* v. *FPC*, 290 F. 2d 149, 157 (5th Cir. 1961), the Court said with regard to timeliness of petitions for review of conditional temporary certificates that, "We think the time for the producers to raise this question [as to validity of conditions] was before they accepted the certificates with the conditions attached." And in *Hunt Oil Co.* v. *FPC*, 334 F. 2d 474 (5th Cir. 1964), although aggrievement issues were not there under review, the Court noted in distinguishing the decision on the merits in *Sunray Mid-Continent* that (334 F. 2d at 479):

"There, unlike here, the producer had not yet dedicated its gas to the interstate market. Where operation had commenced under a temporary authorization, the Tenth Circuit in the same case dismissed a petition to review its conditions. 270 F. 2d at 407."

Reference is made above to an unqualified acceptance of the certificates as being inconsistent with Mobil's posture as an "aggrieved party" seeking judicial review. An implicit question thus is whether Mobil could have protected its appeal rights by tendering "qualified" acceptances which reserved rights to challenge the orders, and other appropriate reservations. In similar situations, qualified acceptances have been attempted, but were rejected by the Commission. By order issued June 3, 1975, temporary certificates were issued to four producers,[2] each of which filed a five-year contract containing depth limitations on

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[1] In *Texaco Inc.* v. *FPC*, 290 F. 2d 149 (8th Cir. 1961), the Court held that an aggrieved producer must seek review of a temporary certificate within 60 days after rehearing is denied by the Commission. In *FPC* v. *Sunray DX Oil Co.*, 391 U.S. 9, 44 (1968), the Supreme Court noted that it did not have "occasion . . . to pass on the correctness of that decision."

[2] Getty Oil Co., Docket No. CI75–319; Atlantic Richfield Co., Docket No. CI75–411; Continental Oil Co., Docket No. CI75–493; Cities Service Oil Co., Docket No. CI75–558.

dedication. All filed qualified acceptances between August 7 and 11, 1975. By letter dated August 19, 1975 (a copy of which is attached hereto), the Commission rejected the attempted acceptances. There is no reason to believe a similar attempt by Mobil would have been treated differently.[3] In dissenting to the August 19th letter, Commissioner Smith labeled the Commission's action "a pointless exercise in jurisdictional gamesmanship," stating:

"If the 'rejection of acceptance' is issued here because the producers reserve their rights to seek judicial review of the Commission's earlier Orders, the rejection denies due process, and I dissent thereto."

It consequently is apparent that there was not any way Mobil could have commenced deliveries and simultaneously maintained a viable challenge to the certificate orders. Assuredly, if deliveries could not be commenced because reservations of rights to review were unacceptable to the Commission, and only by relinquishing such reservations would deliveries be permitted to commence, then the inconsistency between initiation of deliveries based upon an unqualified acceptance, and institution of review proceedings, is obvious.

Moreover, it appears that it was the Commission's intent at every stage of the proceedings to cast its orders is such a way as to preclude or delay judicial review—even if deliveries did not commence. Thus, on August 22, 1975, Mobil filed an application for rehearing of the August 15th order. However, in the responsive order issued September 10, 1975, the Commsision held (p. 1, fn. 1):

"The orders issuing temporary certificates and consolidating the applications of Texaco and Mobil for hearing are not final orders of the Commission; therefore, the applications for rehearing will be treated as petitions for reconsideration."

Under Section 19(a) of the Natural Gas Act, an application for rehearing is a prerequisite for judicial review; and although the Courts have determined that an order does not have to be "final" for purposes of review,[4] the Commission's treatment here indicates strongly that the Commission presumably would have maintained in any subsequent judicial proceeding that a Court of Appeals does not have jurisdiction to review an interlocutory order of a procedural nature, particularly where a "petition for reconsideration," rather than an "application for rehearing" was filed despite the label applied to the document by the producer.

Further, there is no question when the September 10th order issued a permanent certificate, the previously-issued temporary certificate ceased to exist.[5] Consequently, even if Mobil desired to challenge judicially the temporary certificate, it could not have done so because there was no order from which to appeal. Likewise, upon issuance of the order of November 21, 1975, the certificate tendered by the September 10th order was cancelled since two certificates for the same sale cannot coexist. On December 19, 1975, Mobil applied for rehearing of the November 21st order, thereby taking the first statutorily required step to judicial review. On January 13, 1976, the Commission granted rehearing, but solely for purposes of further consideration. The latter action simply affords the Commission an indefinite amount of time within which to act upon the merits of Mobil's application for rehearing. Until the Commission does so act, judicial review proceedings cannot be instituted.

In addition to legal factors, there are relevant practical considerations to be taken into account in assessing the reasonableness of Mobil's position in this instance. Mobil has drawn attention to the fact that the Commission issued a temporary certificate on August 15th, despite the fact that Mobil did not request a temporary certificate. In so doing, we do not believe that Mobil was calling into question the Commission's power to issue temporary authority in the absence of a request therefor. Clearly, the Commission has such power.[6] What is relevant in this connection is that in practical terms there is a significant difference between situations where a producer has applied for temporary authorization and where he has not. In *FPC* v. *Sunray DX Oil Co.*, 391 U.S. 9

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[3] Indeed, the Commission believed there were similarities between the Getty, *et al.*, applications and Mobil's application in Docket No. CI75–538 sufficient to consolidate them for hearing (order issued August 15, 1975).

[4] See, *e.g.*, *Cities Service Gas Co.* v. *FPC*, 255 F. 2d 860 (10th Cir. 1958).

[5] As stated by the Commission in *Placid Oil Co.*, 30 FPC 283, 292 (1963): ". . . once we granted . . . a permanent certificate . . . the temporary authorization ceased to have any prospective application and was, in effect, automatically cancelled."

[6] See, *Hunt Oil Co.* v. *FPC*, 344 F. 2d 474, 479–480 (5th Cir. 1964).

(1968), the Supreme Court pointed out (391 U.S. at 43), that temporary certificates normally are issued ex parte, upon receipt of an application from a producer; that Section 7(c) of the Gas Act permits issuance of temporaries without notice to potentially interested persons; and that no one but the producer recipient may be aware of the issuance of a temporary certificate within the appeal period. In these circumstances, the Court said (391 U.S. at 44–45):

When a producer has requested permission to begin delivery of gas prior to completion of normal certification procedures, due to an emergency, we think it not unfair that in return for that permission it accept the risk that at the termination of those procedures the terms proposed by it may be retrospectively altered to conform to the public interest."

Where, as here, a producer does not affirmatively request temporary authority, he is not asking that the normal procedures for permanent certification be bypassed, and therefore there is no risk to potentially interested parties that deliveries will begin under an authorization as to which there has not been public notice. Conversely, where, as here, an unsolicited temporary certificate is issued by formal order with full public notice, the producer gains only the risk that the terms of the temporary certificate "may be retrospectively altered" by the permanent certificate. From the producer's vantage point, it clearly may not be prudent to commence deliveries under temporary authorization pending resolution of permanent certificate questions because through commencement of deliveries he will be indefinitely committing his gas to interstate service without knowing the conditions of permanent service. As is the case with all temporary certificates issued by the Commission, the August 15th order provided that once begun, the "service may not be discontinued without permission of the Commission issued pursuant to the provisions of Section 7(b) of the Natural Gas Act whether the contract term has expired or not. The issuance of temporary certificate . . . [is] without prejudice to such final disposition of the application for certificate as the record may require." (Ordering Paragraph (E)).

Similar considerations of prudence also may apply to and support a producer's decision to refrain from initiating service under a permanent certificate, where that certificate does not make clear the conditions of permanent service. This is particularly applicable to the Commission's order of November 21, 1975, which attached the now-standard "Order 539 condition," essentially requiring Mobil to accede in advance to a non-contractually based "certificated minimum daily delivery obligation" to be determined in the future. Mobil accordingly was in a posture where it could either commence sales without knowledge of a crucial condition of service—later to be formulated by the Commission, or refrain from commencing deliveries at least until all conditions of service were definite. In this context, it is our view that Mobil acted lawfully, reasonably and prudently in choosing the latter course. Our view is based not only on the factual context involved, but also on expressions and actions of others, including the courts.

Relevant ground rules were established by the Supreme Court in *CATCO*.[7] There the Court determined, among other things, (1) that the filing of applications for certificates "did not constitute a dedication to the interstate market of the gas recoverable under these leases"; (2) there was no doubt "that the producers were at liberty to refuse conditional certificates"; and (3) that there was "nothing illegal" in the producers' rejection of the alternative "proposed by the Commission and their standing firm on their own." (360 U.S. at 387–388).

Following *CATCO*, the Courts of Appeals had occasion to consider cases involving producers' refusals to commence deliveries where conditions of service were indefinite. In *Sunray Mid-Continent Oil Co.* v. *FPC*, 270 F. 2d 404 (10th Cir. 1959), the Court noted the *CATCO* determinations cited above, and relevantly stated (270 F. 2d at 409):

"The Act contemplates that the Commission need not accept the conditions contained in an application, *Sunray Mid-Continent Oil* v. *Federal Power Commission*, supra; it likewise contemplates that the applicant need not accept conditions imposed by the Commission in its initial acceptance. Where conditions are imposed by the Commission the applicant has the free choice to accept or reject; to dedicate his property to public service or to refuse so to do; to submit to the jurisdiction of the Commission or to remain beyond the bounds of interstate commerce. This choice cannot be exercised by the applicant if the Commission says, in effect: 'Sell your gas; collect your proposed initial price; we will

[7] *Atlantic Refining Co.* v. *Public Service Commission of N.Y.*, 360 U.S. 378 (1959).

later tell you if you can keep your collections; if we decide you cannot, you must assure refund by bond.'"

Similarly, in *Sohio Petroleum Co.* v. *FPC*, 298 F. 2d 465 (10th Cir. 1961), where a producer resisted acceptance of a temporary certificate on terms to which other producers had agreed, the Court stated, "We believe petitioner's position to have merit." (298 F. 2d at 468).

Repeated dissenting opinions by Commissioner Smith to similar orders issuing temporary and permanent certificates (including each of the three Mobil orders) well states the producers' dilemma. For instance, in dissenting to the order issued July 24, 1975 in *Marathon Oil Co. et al.*, Docket No. CI75–641, *et al.*, Commissioner Smith stated:

"The producers here are offered temporary certificates that purport to ultimately bind the producers to sale parameters that are currently unknown and unknowable. The producers are asked to submit to the possibility of permanent certificates that would be conditioned upon the sale of gas that is not yet known to exist for a contract term of unknown duration. The only way in which the producers could learn the extent of their obligations before incurring them would be by rejecting the temporary certificates and awaiting hearing and final Commission decision on the reserved issues, a process that could take several months, and one which most certainly cannot be completed in time to allow construction of the pipeline for this winter."

Further, in dissenting to the action of August 19, 1975, rejecting the conditional acceptances of Getty, *et al.*, Commissioner Smith declared:

"The Commission has indicated that the producer contracts underlying the instant applications contain limitations which, after hearing, may be deemed unacceptable for incorporation into permanent certificates. If so, certificates which contain service obligation and reserve dedication more extensive than those set out in the contracts will be proffered, and the producers can either reject or accept them. At this stage, however, it is impossible to decipher just what the Secretary letter purports to do. Temporary certificates to the producers cannot authorize or compel service, the dimensions of which are to be determined at a future hearing, and hence cannot be accepted by the producers until someone tells them what they are to accept.

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"If the 'rejection of acceptance' is issued here because the producers reserve their rights to seek judicial review of the Commission's earlier Orders, the rejection denies due process, and I dissent thereto. If this action is designed to force producers to agree to accept service obligations which are to be developed in the future, it seeks to accomplish an unlawful objective, and I dissent to such action."

It now appears that Commissioner Smith is not alone in his views among Commission members. In a separate opinion to an order issued January 26, 1976, in *Natural Gas Pipeline Co. of America, et al.*, Docket No. CP76–14, *et al.*, Commissioner James G. Watt stated:

"Commissioner Smith, on June 3, 1975, dissented in the Getty Oil Company case, lead Docket No. CI75–319, and on November 21, 1975, in the Natural Gas Pipeline Company of America case, lead Docket No. CP76–14 . . . [8] He properly raised questions about the authorities of the Federal Power Commission to restrict or expand in individual initial sale certification applications the obligations of the producers. I share some of the concerns he voiced."

* * * * * * *

"I am concerned on yet another issue embodied in this Order. On November 28, 1975, the Commission issued an Order granting reconsideration of Order No. 539. There are several policy and legal questions surrounding Order No. 539 that must be addressed by this new Commission. Because of these questions, I have reservations regarding the advisability and thrust of including requirements from Order No. 539, (Sec. 2.83 of the Commission's General Policy and Interpretations) in certificates."

Order No. 539 [9] also has prompted other producers to reject, and refrain from commencing deliveries under certificates containing the standard "certificated minimum daily delivery obligation" condition. See, for example, *Exxon Corp.*, Docket No. CI74?528, order issued January 2, 1976.

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[8] This also is the third Mobil order.

[9] Issued October 14, 1975, Docket No. RM76–8.

It should be apparent from the foregoing that the reason why gas is not now being delivered by Mobil from the Block 95 Field (*i.e.*, imposition of the Order 539 condition), has nothing whatever to do with the issues raised by the Commission in the orders of August 15th and September 10th. In this respect Mobil compromised its position on three significant aspects of its contract (price, depth reservation, and reservation of some gas for its own use), and the Commission compromised on one aspect (contract term). It also is evident that Mobil is not the only producer adhering to its lawful right to refrain from commencing deliveries pursuant to a certificate which it believes to be illegally conditioned; and that in so refraining, no violation of the Outer Continental Shelf Lands Act has been committed.

As to the latter point, it may be observed that Mr. Simons' testimony accurately quotes a portion of Section 8(a) of the OCSLA (43 U.S.C. § 1337(a)), *i.e.*, that the Secretary of Interior is authorized to grant leases, "In order to meet the urgent need for further exploration and development of the outer Continental Shelf . . ." That the energy needs of the public might be met in a timely fashion is an undeniable purpose of the OCSLA; and the statement of Jack E. Earnest on behalf of Mobil before the Oversight Subcommittee clearly demonstrates that Mobil acted with greater than deliberate speed in exploring and developing its leases, in repeatedly urging the Commission to expedite action upon its application for a certificate to sell gas to Trunkline from those leases, and in compromising its position on two of three contested issues. By the order of November 12th, the third contested issue was finally resolved, and but for the new Order No. 539 condition, Mr. Earnest's testimony shows that Mobil was prepared to commence deliveries immediately upon installation of Trunkline's pipeline facilities.

In these respects, it has been held that the OCSLA and the Natural Gas Act are to be applied reciprocally (*Continental Oil Co.* v. *FPC*, 370 F. 2d 57 (5th Cir. 1966)); that refusal by a producer to dedicate to interstate commerce gas from OCS leases does not in and of itself constitute a violation thereof (*Public Service Commission of N.Y.* v. *FPC*, 463 F. 2d 824 (D.C. Cir. 1972)); and that the Commission cannot directly require a producer to dedicate its gas to interstate commerce (*ibid.* at 829). Finally, in *CATCO*, which also involved OCS acreage, and which was decided six years after the OCSLA was enacted, the Supreme Court stated that the producers involved had the right to reject conditional certificates which were not in substantive accord with their contracts, and await the conclusion of proceedings before committing their gas to interstate commerce (360 U.S. at 387–388). Mobil's rights are no less than the *CATCO* producers, and its position no less reasonable.

In sum, it is our opinion that Mobil's judicial review posture could have been severely prejudiced had Mobil commenced deliveries under authorizations it believed to be invalid; that Mobil acted prudently in preserving its rights to review by not initiating deliveries; that for practical reasons it would have been unwise to commence deliveries without knowing the substantive conditions of service; and that otherwise, Mobil did all it could do in order to expeditiously secure a reasonable and lawful certificate.

Sincerely yours,

PHILIP R. EHRENKRANZ.

ADDITIONAL VIEWS OF HON. W. S. (BILL) STUCKEY

I take exception to the contentions that Mobil, through its acts regarding the Grand Isle 95 Field, has been solely responsible for the delays in field production and delivery.

The responsibility for the Grand Isle controversy should be shared by the Federal Power Commission as well as Mobil. While they both acted within legal limits, they neglected the probability of an emergency during the 1976 winter season.

The FPC showed that their procedural mechanism was both unreliable and inefficient when they neglected to expediate consideration of Mobil's certification. On the other hand, Mobil, although genuinely interested in protecting their legal rights over some vital issues under litigation, did not act responsibly in seeking to expediate production from Grand Isle 95.

The apparent loser in this entire controversy was Trunkline Gas Company and through them the consumers who had contracted for the gas and invested $37 million toward its production and delivery. Without the construction of a pipeline from the field to the delivery lines, natural gas could not be transported during this winter season. Trunkline was delayed to the point that construction was not possible to achieve delivery for the winter season.

As to Mobil, it seems to me that profit incentives should not be blinders to the exclusion of public welfare. A reduction in supply could adversely effect agricultural production, industrial output and its concomitant unemployment, and more importantly public health. Such a disregard is inexcusable.

Finally, while I am acutely aware of the intricacies of the legal issues involved and can appreciate the care which must be taken so as not to jeopardize one's position, it appears that this case demonstrates the bureaucratic ineptitude of the Federal Power Commission. The inability of the FPC to make a timely determination that would result in increased natural gas production and delivery demonstrates a total insensitivity for the public health and welfare.

W. S. (Bill) Stuckey, Jr.

ADDITIONAL VIEWS

This report demonstrates the total indifference of a major gas producer to the needs of interstate gas consumers. The American public has a right to expect that Federally-owned Outer Continental Shelf gas will be produced and delivered to the interestate market with the public's interest in mind. Of course, a producer should be able to make a fair profit on this gas. But when the producer is able to withhold gas from the market and insist upon an excessive profit, there is something very wrong indeed.

We would note at the outset that none of the Members who signed the minority views was actually present at the hearing on this matter.

Mobil's argument, as stated in the minority views, is essentially that its legal position would somehow be "compromised" by delivering gas while certain issues are being decided by the Federal Power Commission and possibly the courts. The Minority submits a long legal memorandum prepared by Mobil's lawyers which, not surprisingly, concludes that such prejudice could occur.

The Minority contends that "there is disagreement concerning whether Mobil's rights would have been fully protected" if Mobil had commenced deliveries of gas pending a hearing on the issues in controversy. Mobil argues that its "judicial review posture *could* have been severely prejudiced had Mobil commenced deliveries . . ." (emphasis supplied). The alleged existence of this "disagreement" over the current state of the law on this matter is cited by the Minority as sufficient reason for Mobil to refuse to commence deliveries to interstate commerce—its negative impact on the consuming public notwithstanding.

The fact is Mobil would not be prejudiced in the ultimate disposition of the contested legal issues regarding its attempted contract reservations by commencing deliveries of natural gas. Elementary rules of procedural due process make it clear that Mobil's rights in this matter are fully preserved in both the administrative and judicial contexts.

Mobil's legal memorandum alleges that its judicial review position will be prejudiced if it commenced deliveries under a temporary certificate. However, the cases cited by Mobil do not support this proposition. Mobil cites *Sunray Mid-Continent Oil Co.* v. *FPC*, 270 F. 2d 404 (10th Cir. 1959) as authority for Mobil's alleged prejudice if it begins deliveries under a temporary certificate. In that case, however, the company had a choice whether or not to dedicate the gas to interstate commerce and the FPC condition at issue was one which required the natural gas producing company to continue deliveries once service commenced. Here the situation is entirely different because Mobil's deliveries of gas from the OCS must flow in interstate commerce.[1]

Furthermore, in *FPC* v. *Sunray DX Oil Co.*, 391 U.S. 9 (1968), the Supreme Court in considering substantive FPC conditions challenged by Superior Oil Company, fully considered the merits of those con-

[1] Natural Gas Act, 15 U.S.C. § 717(a) *et seq.*, Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 *et seq.*

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ditions. The fact that Superior had begun deliveries under a temporary certificate was in no way a prejudice to the full and fair consideration of the issues. (*See* 391 U.S. at 32–36). In addition, the Temporary Certificate may be subject to immediate judicial review. *See Pure Oil Co.* v. *FPC*, 292 F. 2d 350 (7th Cir. 1961); *Sohio Petroleum Co.* v. *FPC*, 298 F. 2d 465 (10th Cir. 1961).

The important point is that Mobil will be able to challenge the propriety of any condition attached to its certificate by the FPC before a Federal appellate court, either by challenging the conditions of the Temporary Certificate immediately or by seeking review of the Permanent Certificate later. And any resolution of those issues will have retroactive effect. *See Public Service Commission of the State of New York* v. *FPC*, 329 F. 2d 242, *cert. denied*, 377 U.S. 963 (1964); *Public Service Commission of the State of New York* v. *FPC*, 327 F. 2d 893 (D. C. Cir. 1964); *American Liberty Oil Co.* v. *FPC*, 301 F. 2d 15 (5th Cir. 1962); *J. M. Huber Corp.* v. *FPC*, 294 F. 2d 568 (3rd Cir. 1961).

What the Minority also neglects to answer is why Mobil's position was any different from the positions of producers in the other 20 applications consolidated in the *Getty* case and explained in the Report.

Mobil could have commenced deliveries of gas to interstate consumers and then fully litigated the legal issues raised by its attempted contract reservations. Instead, Mobil chose to withhold its gas from the interstate market where OCS gas must eventually be sold under conditions established by the Federal Power Commission, subject to court review.[2]

It was irresponsible for Mobil to withhold its gas from interstate consumers faced with serious shortages of natural gas this winter when deliveries from Grand Isle 95 could have significantly reduced curtailments to Trunkline and Texas Eastern. Mobil's withholding helped make its advertisements proclaiming a natural gas shortage of self-fulfilling prophecy.

The report also demonstrates the lack of logic in the recently terminated FPC program of advance payments. There simply was little economic pressure on Mobil to begin delivering this gas because it was proceeding under an advance payments agreement. Under this agreement, it has no interest charges and repayment of the loan is deferred *until deliveries begin*. Though it is true that Mobil had spent substantial sums on acquiring the OCS leases, the fact that the $37 million development cost had been advanced to Mobil reduced the pressure on Mobil to proceed as quickly as possible. Mobil was therefore content to wait until it obtained the conditions it wanted.

Mobil's behavior should not be tolerated by the FPC, Congress, or the consuming public. The use of natural gas deposits on Federal lands as an economic bargaining tool by the natural gas industry at consumer expense must be ended.

JOHN E. MOSS.
ANTHONY TOBY MOFFETT.
HENRY A. WAXMAN.
ANDREW MAGUIRE.

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[2] Orders of the Federal Power Commission are subject to review by a Federal Court of Appeals and if required by the Supreme Court. The findings of the FPC may be reversed if not supported by "substantial evidence." 15 U.S.C. § 717r(b). *See FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Interstate Natural Gas Co.* v. *Southern California Gas Co*, 102 F. Supp 685 (D. Calif. 1952); *J. M Huber Corp.* v. *FPC*, 294 F. 2d 568 (3rd Cir. 1961).

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